

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**THOMAS E. OTT, JR,**

**Plaintiff,**

**v.**

**Case No. 14-CV-556**

**H & M HENNES & MAURITZ LP,**

**Defendant.**

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**FINAL PRETRIAL ORDER**

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On January 15, 2016, the court conducted a final pretrial conference in this matter. Appearing in person for plaintiff Thomas E. Ott, Jr were attorneys Nathan D. Eisenberg and Jill M. Hartley, and appearing in person for defendant H & M Hennes & Mauritz LP was attorney Kathleen M. Mundo. A jury trial is scheduled to commence on **February 2, 2016 at 8:30 AM** in Courtroom 284 of the United States Courthouse, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin.

Based upon the court's consideration of the parties' pretrial reports and the statements of counsel, for the reasons more fully stated on the record, the court enters the following Order, which shall govern the trial in this matter:

1. An eight person jury shall be selected. Its verdict shall be unanimous.

2. The court will voir dire the entire jury pool. Following voir dire, the court will entertain motions to strike for cause. From the first 14 remaining prospective jurors the parties will each exercise three peremptory strikes per side to arrive at a final eight person jury.
3. The jurors will not be permitted to ask questions of witnesses.
4. The jurors will be permitted to take notes.
5. All exhibits received in evidence will be sent to the jury room during jury deliberation unless a specific objection to the exhibit or portion thereof is raised by a party following the conclusion of the trial. The jury will receive a copy of the jury instructions, and each juror will receive a copy of the special verdict for their deliberations.
6. If a party wishes to publish an exhibit to the jury, the party must utilize demonstrative means to make that exhibit visible to all jurors simultaneously and/or provide each juror with a paper copy of the exhibit.
7. The parties are responsible for supplying any electronic equipment necessary to facilitate the presentation of their case. Parties wishing to deliver or set up equipment in the courtroom in advance of trial may do so on Monday, February 1, 2016. Parties should contact the court's deputy clerk at 414-297-1831 to schedule a time.

8. Each party is responsible for ensuring the appearance of any witness the party intends to call to testify.
9. Only a single attorney for each party shall examine or cross-examine any individual witness.
10. The witnesses will be sequestered. Thomas E. Ott, Jr. and a representative of defendant H&M may be present throughout the trial. Counsel for each party is responsible for ensuring that their respective witnesses are aware of and comply with the sequestration order.
11. Only if absolutely necessary are parties to ask for a side-bar conference if the jury is present. Ordinarily, if additional argument or explanation is necessary regarding an objection, the objection should be raised and the party should request to be heard at the next break.
12. Trial days shall begin at 8:30 A.M., with a break in the morning, roughly one hour for lunch, an afternoon break, and court will adjourn for the day at 5:00 P.M.
13. The parties shall compile a single joint exhibit list, eliminating duplicate exhibits.
14. The parties shall compile one or more binders containing their collective exhibits.

In addition to sets for counsel, not later than 4:30 PM, Monday, February 1, 2016, the parties shall deliver to the court one set of the exhibits for the court and one

set for the witness. The exhibits for the witness will be considered the official exhibits and shall be sent to the jury.

15. With respect to the Motion in Limine by Thomas E. Ott, Jr. to exclude evidence of disciplinary actions and performance reviews (ECF No. 41), the plaintiff may reply to the defendant's response no later than Monday, January 18, 2016.

16. With respect to Motion in Limine No. 1 by H & M Hennes & Mauritz LP ((ECF No. 44), the individual motions are resolved as follows:

- a. Prior Lawsuits: Granted.
- b. Other Claims: Granted.
- c. Law Firm Information: Denied without prejudice.
- d. Referring to Plaintiff's Financial Status: Denied.
- e. Undisclosed Opinions and Bases Thereof: Granted, subject to a determination of defendant's motion to bar the testimony of Daniel Millikin.
- f. Comments on Corporate Entity: Denied without prejudice.
- g. Testimony from Undisclosed Witnesses: Granted as it applies to Frank Budzinski (*see* ECF No. 48 at 1-2) but denied without prejudice as to any other unknown, undisclosed witness.
- h. Evidence or Testimony Not Previously Disclosed: Denied without prejudice.

- i. Exclusion of Witnesses Expected to Testify at Trial: Granted as set forth in ¶ 10 above.
17. With respect to Motion in Limine No. 2 by H & M Hennes & Mauritz LP to bar the testimony of Daniel Millikin (ECF No. 45): The plaintiff shall respond no later than noon on January 20, 2016. The defendant may reply no later than 5:00 PM on January 21, 2016.
18. With respect to Motion to Strike Plaintiff's Punitive Damages Instructions And Bar Reference to Punitive Damages at Trial by H & M Hennes & Mauritz LP (ECF No. 47; *see also* ECF No. 48 at 3-4): Denied without prejudice. Matters relating to jury instructions will be addressed in conjunction with the court's decisions regarding jury instructions in this matter.
19. With respect to the defendant's objection to the plaintiff's request for a back pay jury instruction (ECF No. 48 at 2-3), this matter will be addressed in conjunction with the court's decisions regarding jury instructions in this matter.

**SO ORDERED.**

Dated at Milwaukee, Wisconsin this 15th day of January, 2016.

  
WILLIAM E. DUFFIN  
U.S. Magistrate Judge